

REMARKS

Claims 4-9, 13, 30-36, and 41 have been cancelled. Claims 1 and 37 have been amended to correct typographical errors. No new matter has been added. Claims 1-3, 10-12, 14-29, and 37-40 are pending.

Claim Rejections – 35 U.S.C. §102(e)

The Examiner has rejected Claims 1-3, 10-12, 14-16, 18-20, 22-25, 27-28, and 37-40 under 35 U.S.C. §102(e) as being anticipated by Li et al. (U.S. Pub. 2003/0004850). The rejections are respectfully traversed.

Independent Claims 1, 37, and 40 each recite awarding [upon completion of an auction] “to the highest ranked bidder in the auction an amount equal to the minimum volume **and an additional volume**, up to the maximum volume, **based on a factor that is related to a difference between a first ranked bid and a second ranked bid**” (emphasis added). Applicants have reviewed each of the portions of Li cited by the Examiner (the Figures, and paragraphs [0109], [0112], [0173]-[0174], and Claim 1) and have been unable to locate the recited limitation.

Paragraph [0109] of Li appears to describe the use of a web page in an auction and the states an auction can be in. Paragraph [0112] of Li appears to describe a supplier learning about outstanding bids. Paragraphs [0173]-[0174] of Li appear to describe various constraints that can be used in conjunction with business rules. Paragraph [0179] of Li appears to describe the use of a conditional flag by an optimization engine.

As none of the portions of Li cited by the Examiner disclose the aforementioned limitation, independent Claims 1, 37, and 40 are believed to be allowable. Applicants therefore respectfully request that Claims 1, 37, and 40 be allowed. If the Examiner does not allow those Claims, Applicants respectfully request that the Examiner provide an explicit citation to where the aforementioned limitation may be found in Li.

Claims 2-3, 10-12, 14-29, and 38-39 depend from one of the aforementioned independent Claims and are therefore believed to be allowable for the same reasons described above.

Claim Rejections – 35 U.S.C. §103(a) – Official Notice

The Examiner has rejected Claims 17, 21, 26, and 29 under 35 U.S.C. §103(a) as being unpatentable over Li in view of Official Notice. The rejections are respectfully traversed.

Specifically, Applicants traverse the taking of Official Notice in the rejection of Claims 17, 21, 26, and 29. Official notice may only properly be taken of matters of such common knowledge as to be beyond reasonable question or dispute, and such is not the case here. Applicants hereby respectfully request that the Examiner either provide documentary evidence to show that the limitations added by dependent Claims 17, 21, 26, and 29 are within common knowledge, or allow those Claims. In re Ahlert, 424 F.2d 1088, 165 U.S.P.Q. 418, 420 (CCPA 1970); see also MPEP 2144.03.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

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